

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

LAUREL J. MAU,	)	CIV. NO. 12-00468 DKW-BMK
	)	
Plaintiff,	)	
	)	FINDINGS AND
vs.	)	RECOMMENDATION DENYING
	)	BILLS OF COSTS
MITSUNAGA & ASSOCIATES,	)	
	)	
Defendant.	)	
_____	)	

FINDINGS AND RECOMMENDATION DENYING BILLS OF COSTS

Before the Court are Bills of Costs filed by Plaintiff Laurel J. Mau (Doc. 182) and Defendant Mitsunaga & Associates, Inc. (Doc. 170). After careful consideration of the Bills of Costs, as well as the supporting and opposing papers, the Court finds that no party clearly prevailed and recommends that neither party be awarded costs. Therefore, the Court recommends that the Bills of Costs be DENIED.<sup>1</sup>

Federal Rules of Civil Procedure 54(d)(1) provides that “[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney’s fees – should be allowed to the prevailing party.” Fed. R. Civ. P. 54(d)(1). The Local Rules provide that “[t]he party entitled to costs shall be the

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<sup>1</sup> The Court elects to decide this Motion without a hearing, pursuant to Local Rule 7.2(d).

prevailing party in whose favor judgment is entered.” Local Rule 54.2(a).

Importantly, “[t]he trial judge has wide discretion in awarding costs under Rule 54(d) and may deny costs to the prevailing party in its discretion provided the court indicates its reasons.” Honolulu Data Entry Project, Ltd. (HDEP) v. D. Bello Assoc., Civ. No. 12-00467 BMK, slip op. at 5 (D. Haw. Sept. 10, 2014) (citing K-S-H Plastics, Inc. v. Carolite, Inc., 408 F.2d 54, 60 (9th Cir. 1969)); see also Yasui v. Maui Elec. Co., 78 F. Supp. 2d 1124, 1126 (D. Haw. 1999).

In HDEP, this Court recently concluded that, because both parties prevailed on some claims and lost some claims, “the results are sufficiently mixed such that no party clearly prevailed.” HDEP, Civ. No. 12-00467 BMK, slip op. at 8. Similarly here, both parties prevailed on some claims and lost some claims. Plaintiff brought claims for sex and age discrimination, retaliation, negligent and intentional infliction of emotional distress, and punitive damages. (Doc. 1) Plaintiff agreed to dismiss her claims for age discrimination under the Age Discrimination in Employment Act and under state law, and the Court dismissed the emotional distress claims. (Docs. 117, 119, 152.) The jury found in favor of Defendant on Plaintiff’s remaining claims. (Docs. 165, 184.) In its Counterclaim, Defendant brought claims for breach of the duty of loyalty, intentional or tortious interference with prospective business or economic advantage, negligence,

conversion, fraud, and punitive damages. (Doc. 33.) The jury found in favor of Defendant on its claim for breach of the duty of loyalty and awarded it \$1 for this claim; but the jury found for Plaintiff on the remaining counterclaims. (Docs. 165, 184.) As in HDEP, the Court finds that “the results are sufficiently mixed such that no party clearly prevailed.” Accordingly, the Court exercises its discretion in recommending that costs be awarded to neither party.

Lastly, in the Objection to Plaintiff’s Bill of Costs, Defendant seeks \$600 in attorney’s fees that it “was forced to incur . . . in . . . responding to Plaintiff’s Bill of Costs.” (Doc. 187 at 8.) Defendant requests these fees under Local Rule 11.1, which authorizes sanctions against counsel or a party who fails to comply with the Court’s Local Rules. LR 11.1. Here, the Court has not found that Plaintiff failed to comply with the Court’s Local Rules. Therefore, the Court finds and recommends that Defendant’s request for sanctions under Local Rule 11.1 be denied.

In sum, the Court finds and recommends that Plaintiff’s and Defendant’s Bills of Costs (Docs. 170 & 182) be DENIED.

Any Objection to this Findings and Recommendation shall be filed in accordance with the Federal Rules of Civil Procedure and this Court’s Local Rules.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, September 17, 2014.



/S/ Barry M. Kurren  
Barry M. Kurren  
United States Magistrate Judge

Mau v. Mitsunaga & Assoc., CIV. NO. 12-00468 DKW-BMK; FINDINGS AND  
RECOMMENDATION DENYING BILLS OF COSTS.